THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13131 OF 2005

DATED:23.8.2005

Between:

Gubba Madan Mohan

S/o.Late G.Venkateshwar Rao

Gubba Ramachandraiah & Sons

Shadnagar, Mahaboobnagar District

…Petitioner

And

The District Supply Officer,

Civil Supplies Department,

Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13131 OF 2005

ORDER:

The petitioner is a wholesale kerosene dealer at Shadnagar, in Mahaboobnagar District. The District Supply Officer, Mahaboobnagar allotted 60,000 litres of kerosene for the month of June, 2005 to the petitioner. The petitioner was to lift the stock of kerosene from Ghatkesar Depot in Ranga Reddy District. He sent his oil tanker bearing No.AP 31T 7054 on 14.6.2005. The driver of the tanker got the tanker loaded with first lot of 12,000 litres. While the tanker reached Sivarampally, respondents 1 to 3 herein stopped the tanker and seized the same on allegation that the driver was allegedly unloading 350 litres of kerosene into two barrels at

premises in Sivarampally in Ranga Reddy District. This action is assailed in the Writ Petition as illegal, arbitrary and without jurisdiction.

The District Supply Officer, Hyderabad City, filed a counter affidavit along with an application for vacating interim order being W.V.M.P.No.1789 of 2005 justifying the seizure and also denying the allegation that he has no such power to stop tanker and seize the petroleum products.

Learned counsel for the petitioners, Sri P.Veera Reddy, placed strong reliance on clause- 9 of Kerosene (Restriction on use and fixation of ceiling price) Control Order, 1993 (for short, the Control Order) issued by the Central Government. According to the learned counsel, unless and until the officer of the Department of Food and Civil Supplies not below the rank of Inspector is authorized by notification of the Central Government or the State Government, such officer cannot seize and search any vessel for any alleged contravention of the Control Order. This was denied. Therefore, learned Government Pleader was directed to produce relevant notification under clause 9 of the Control Order.

Learned Assistant Government Pleader has produced before this Court orders of the Government in G.O.Ms.No.61, dt.31.5.2005 in support of the contention that first respondent is competent to search and seize oil tankers. This Court cannot accept the contention. A reading of the said Government Order in G.O.Ms.No.61, dt.31.5.2005 would show that the Government only constituted Joint Task Force Team with officials of Civil Supplies, Legal Metrology and Oil Companies to check adulteration of petrol, diesel, oils and lubricants in the petrol/diesel bunks and outside the petrol/diesel bunks in private premises/vehicles and industries/firms. The same was admittedly not notified. Even otherwise, the said Government Orders are not referable to clause-9 of the Control Order and therefore this Court finds force in the submission of the learned counsel for the petitioner that the seizure was without authority.

It is brought to the notice of this Court that 12,000 litres of kerosene seized from petitioner was sold through public distribution system and the vehicle was released on furnishing bank guarantee as directed by this Court in its interim order dt.21.6.2005 in W.P.M.P.No.16681 of 2005. Therefore, while allowing the Writ Petition as prayed for, respondents are restrained from enforcing the bank guarantee against petitioner.

The Writ Petition is accordingly allowed. No costs.

_____

(V.V.S.RAO, J)

23.8.2005

bnr